

NTSB Order No. EA-4425

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of February, 1996

Docket SE-14008

the sale of controlled substances, revocation was warranted under section 61.15(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 918),² because the conviction was for more than simple possession. As discussed below, we deny respondent's appeal.

In the Emergency Order of Revocation (complaint), dated March 15, 1995, the Administrator alleged that respondent violated FAR section 61.15(a) as follows:

On or about December 3, 1990, in the Municipal Court of California, County of Tulare, Visalia District, Visalia, California, you were convicted for the felony of the Sale of Chemicals and Equipment for Making Controlled Substance in violation of California Health and Safety Code Section 11366.7.

Based on this conviction, the Administrator further alleged that respondent lacked the care, judgment, and responsibility, as well as the qualifications, required of a certificate holder. The law judge agreed, finding that respondent's conviction for more than simple possession made the sanction of revocation appropriate. (Decisional Order at 2.)

² § 61.15 **Offenses involving alcohol or drugs.**

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

* * * * *

(2) Suspension or revocation of any certificate or rating issued under this part.

Respondent waived expedited review of the charges under Subpart I of the Board's rules of practice for emergency cases. See 49 C.F.R. Part 821.54-57.

On appeal, respondent first contends that an emergency revocation was not warranted in his case, as there was no showing that he now lacks the qualifications necessary to hold a private pilot certificate: the Administrator merely stated that he was convicted of a drug-related crime in 1990. It is well-settled, however, that the Board is not empowered to review the reasonableness of the Administrator's determination that an emergency requiring immediate action existed. See Administrator v. Correa, NTSB Order No. EA-3815 at 3 (1993); Administrator v. Mealey, NTSB Order No. EA-3634 at 2, n.4 (1992).

Although he does not dispute his December 1990 conviction, respondent asserts that a hearing before an administrative law judge is warranted on the issue of sanction, since section 61.15 authorizes a sanction of suspension or revocation. The circumstances surrounding the conviction are relevant to the determination of the severity of sanction, he continues, and, therefore, he was prejudiced by the law judge's issuance of a decision without a hearing. The Administrator replies that it is current FAA policy to revoke, barring extraordinary circumstances, an airman's certificate when the airman has been convicted of more than simple possession of illegal drugs.³

³The Administrator cites 54 Fed. Reg. 15144, 15146 (April 14, 1989) for the guideline that a drug conviction for more than a simple possession, except in extraordinary circumstances, will result in certificate revocation. Among the factors considered to determine whether circumstances are extraordinary are the circumstances underlying the criminal conviction, the time that has passed since the conviction became final, and evidence of rehabilitation. FAA Order 2150.3A, change 8, App. 1. Additionally, we note that the Board is bound by the

The Administrator's attachments to the Motion for Summary Judgment show that respondent was convicted of knowingly selling a "chemical, drug, laboratory apparatus and device" to be used to "unlawfully manufacture, compound, convert, process and prepare a controlled substance."⁴ Also attached to the motion was a letter from respondent to the FAA, dated February 14, 1995, wherein he admitted that his company "previously sold ephedrine hydrochloride legally and I guess I minimized the severity of selling it to a friend in 1990." Although respondent asserts on appeal that the information is insufficient support for the law judge's conclusion that he participated in a criminal enterprise for economic or commercial gain, the fact remains that respondent was convicted of unlawfully selling a chemical used to manufacture a controlled substance, and that conviction is for more than simple possession of contraband. As we stated in Administrator v. Piro, NTSB Order No. EA-4049 at 4 (1993),

(..continued)

Administrator's interpretations of written agency policy guidance relating to sanction. 49 U.S.C. § 44709(d)(3).

⁴Respondent was convicted of one count of the following:

Sale of chemicals and equipment for making controlled substance, in violation of Section 11366.7 of the [California] Health and Safety Code, in that on or about the 17th of August, 1989, [he] did willfully and unlawfully sell a chemical, drug, laboratory apparatus and device with knowledge that such chemical, drug, laboratory apparatus and device was to be used to unlawfully manufacture, compound, convert, process and prepare a controlled substance for unlawful sale and distribution.

(Complaint in California v. Poole and Judgment Proceedings at 1, attachments to Administrator's Motion for Summary Judgment.)

any drug conviction establishing or supporting a conclusion that the airman possessed a controlled substance for profit or commercial purposes is a flagrant one warranting revocation under the regulation. An individual who knowingly participates in a criminal drug enterprise for economic gain thereby demonstrates such a disregard for the rights and lives of others that he may reasonably be viewed as lacking the capacity to conform his conduct to the obligations created by rules designed to ensure and promote aviation safety.

See also Administrator v. Nave, NTSB Order No. EA-4257 at 3 (1994) ("Piro established that one category of drug conviction should always be considered serious enough to justify the Administrator's choice of revocation under FAR section 61.15, without regard to the seriousness of the airman's actual conduct in connection with the conviction").

While summary judgment is not always appropriate in section 61.15 cases that do not involve aircraft use,⁵ it is, nevertheless, appropriate in the instant case, given respondent's conviction for more than simple possession of a controlled substance for commercial gain and the Administrator's clear policy on the effect of such a conviction on a respondent's airman certificate.

⁵See Administrator v. Butchkosky, NTSB Order No. EA-4229 at 6-7 (1994).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The decisional order and the emergency order of revocation are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and GOGLIA, Members of the Board, concurred in the above opinion and order.